

Tentative Ruling

(17)

Re: ***Diocese of San Joaquin v. Schofield, et al.***
Superior Court Case No. 08CECG01425

Hearing Date: March 7, 2013 (Dept. 402)

Motion: Plaintiffs' Motion for Summary Judgment/Adjudication

Tentative Ruling:

To deny.

Should either party request oral argument pursuant to Local Rule, that hearing will be held in Department 402 on Wednesday, March 13, 2013 at 3:30 p.m.

Explanation:

The question presented here is who owns the Church property of a formerly subordinate branch of a hierarchical church when the branch breaks off from the general church in exercise of its first amendment rights? The answer, according to California case law, depends on the interpretation of the governing documents of the branch and Church. Plaintiffs have failed to submit these necessary documents and have thus failed to meet their evidentiary burden on summary judgment/adjudication. Thus, the motion must be denied.

Procedural History:

The complaint was filed April 24, 2008. An amended complaint was filed June 2, 2008. A second amended complaint was filed by stipulation and order on September 26, 2008. This court granted leave to file a third amended complaint and it was filed on February 17, 2009. After a successful demurrer a fourth amended complaint was filed on May 28, 2009.

In the interim, this court granted summary adjudication of the first cause of action for declaratory relief, ruling that the actions of the Diocese of San Joaquin in attempting to withdraw from the national church were ultra vires and impermissible under the constitution and canons of the national church. The Fifth District Appellate Court granted writ review and, in a published decision, *Schofield v. Superior Court* (2010) 190 Cal.App.4th 154 (*Schofield*), directed us to vacate our order granting plaintiffs' motion for summary adjudication and to dismiss the first cause of action for declaratory relief.

On June 1, 2011, after issuance of the remittitur, this court granted plaintiffs' motion for leave to file a fifth amended complaint.

Now plaintiffs' have filed a motion for summary judgment, or in the alternative summary adjudication, seeking adjudication of all the remaining causes of action on the ground that the Fifth District Court of Appeals made several rulings that "effectively dispose of the remaining issues in this case" and only remanded the matter for the assessment of the validity of the property transfers made by Bishop Schofield while he was the duly constituted Bishop of the Episcopal Diocese of San Joaquin. Plaintiffs claim that since all of the disputed transfers occurred after Schofield was removed as a Bishop of the Episcopal Church, the court should void the property transfers and enter judgment on all of plaintiffs' causes of action.

The Schofield Decision:

The *Schofield* case came before the Fifth District Court of Appeals on a petition for writ of mandate after this trial court granted a motion for summary adjudication of the first cause of action for declaratory relief. The Fifth District concluded: "plaintiffs' first cause of action presents a purely ecclesiastical controversy not justiciable by civil courts. Accordingly, the trial court erred in granting plaintiffs' motion for summary adjudication on that cause of action." (*Schofield, supra*, 190 Cal.App.4th at 156.)

The Fifth District framed the issue as follows:

The issue before us in this case is not resolution of a property dispute, although other causes of action still pending in the trial court do present that issue. The summary adjudication of the first cause of action, and the petition seeking review of that order, however, present solely this issue: who is the Bishop of the Diocese of San Joaquin, John-David Schofield or Jerry A. Lamb? This is an issue the First Amendment forbids us from adjudicating.

(*Schofield, supra*, 190 Cal.App.4th at p. 161.)

In its opinion, the Fifth District articulated four facts which were "established by the record" as "ecclesiastical facts" that no civil court had jurisdiction to adjudicate. (*Schofield, supra*, 190 Cal.App.4th at p. 162.)

First, before and through January 11, 2008, Schofield was the Episcopal Bishop of the Diocese of San Joaquin; on that day, his powers as Episcopal Bishop were suspended by the national church. Second, after March 29, 2008, Lamb was the Episcopal Bishop of the Diocese of San Joaquin, duly recognized by the national church. Third, at some point Schofield became the Anglican Bishop presiding over an Anglican Diocese of San Joaquin, affiliated with the Anglican Province of the Southern Cone of South America. In further proceedings in the trial court, these facts may be relevant to the court's consideration of the issues before it, but the validity of such removals and appointments are not subject to further adjudication by the trial court. The continuity of the diocese as an entity within the Episcopal Church is likewise a matter of ecclesiastical law, finally resolved, for civil law purposes, by the Episcopal church's recognition of Lamb as the bishop of that continuing entity.

(*Ibid.*)

The Fifth District reserved the issue of the propriety of the property transfers made by Schofield to this trial court:

Nevertheless, civil court jurisdiction is properly invoked to resolve issues concerning property transfers assertedly made by Schofield while he was the duly constituted Bishop of the Diocese of San Joaquin. Resolution of these issues involves consideration of both the powers invested in the bishop under the church law at the time he took those actions, and the powers of the bishop under state corporate, trust, and property law at the time he took these actions.

(*Schofield, supra*, 190 Cal.App.4th at p. 162.) The Appellate Court advised this court to “apply neutral principles of law to resolve property disputes presented by the remaining causes of action” in further proceedings. (*Id.* at p. 163.)

Present Controversy:

Plaintiffs seek summary judgment against all defendants, save Merrill Lynch, or in the alternative summary adjudication of each of the remaining causes of action, including the first for declaratory relief, the second for conversion or real and personal property, the third for ejectment from the real property, and the fourth for fraudulent conveyances from the defendants to the Anglican Diocese Holding Corporation, and the fifth to quiet title to the real property.

Plaintiffs read the *Schofield* decision as supporting their motion for summary judgment/adjudication, because, as they contend, the only issue for this court is the determination of the date that Bishop Schofield transferred the Episcopal Dioceses' property to the Anglican Diocese. Because it is undisputed that the retitling of the accounts occurred after Schofield was inhibited and deposed as Bishop of the Episcopal Church, plaintiffs assert that judgment must be granted, because at the time the transfers were made, Schofield lacked any authority to make them.

Defendants interpret the *Schofield* decision differently. They see it leaving only the issue of whether the December 8, 2007 vote of the 2007 Diocese of San Joaquin's Annual Convention was ultra vires under neutral principals of law. Because defendants assert that there can be no qualification on an individual's or association's right to freedom of association under the First Amendment, they should be free to take “their” property with them to their new denomination.

Law of the Case:

Under the doctrine of law of the case, “ ‘the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.’ ” (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 301.) The law of the case doctrine applies *only* to an appellate

determination that states a “ ‘ “rule of law necessary to the decision,” ’ ” i.e. a conclusion on a question of law, not an issue of fact. (*People v. Barragan* (2004) 32 Cal.4th 236, 246.) Only those rulings that are “necessary” to the appellate court’s decision are law of the case. Thus, the doctrine does not apply to a dictum. (*Gyerman v. United States Lines Co.* (1972) 7 Cal.3d 488, 498.)

Here, the findings that various facts are ecclesiastical and the finding that the ecclesiastical facts were supported by the record then on appeal are law of the case, but the facts themselves are not.

Plaintiffs have Failed to Meet their Burden on Summary Judgment:

A plaintiff seeking summary judgment bears the initial burden to prove each element of his or her causes of action. (Code Civ. Proc. § 437c, subd. (p)(1); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, 107 Cal.Rptr.2d 841, 24 P.3d 493 (*Aguilar*).) Once a plaintiff moving for summary judgment meets that burden, “the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.” (Code Civ. Proc., § 437c, subd. (p)(1).)

Here, plaintiffs bore the burden to present evidence establishing every element necessary to show defendants’ conduct in retaining the property owned by the Episcopal Diocese of San Joaquin as of December 7, 2007, was unlawful as a matter of law. (Code Civ. Proc., § 437c, subd. (p)(1); *Aguilar, supra*, 25 Cal.4th at p. 850.) They have not done so.

Church Property Disputes:

Secular courts, when resolving church property disputes, must not entangle themselves in disputes over church doctrine or infringe the free exercise of religion. (*In re Episcopal Church Cases* (2009) 45 Cal.4th 467, 478-479.) In *In re Episcopal Church Cases* (2009) 45 Cal.4th 467, the California Supreme Court held that we must apply the “neutral principles of law” approach to resolving church property disputes in a hierarchical church organization.

In *Schofield*, the Fifth District Appellate Court held four facts established as a matter of ecclesiastical law: before and through January 11, 2008, *Schofield* was the Episcopal Bishop of the Diocese of San Joaquin; after March 29, 2008, Lamb was the Episcopal Bishop of the Diocese of San Joaquin; at some point *Schofield* became the Anglican Bishop presiding over an Anglican Diocese of San Joaquin; and the continuity of the diocese as an entity within the Episcopal Church is ... a matter of ecclesiastical law, finally resolved, for civil law purposes, by the Episcopal church’s recognition of Lamb as the bishop of that continuing entity. (*Schofield, supra*, 190 Cal.App.4th at p. 162 (Emphasis added).)

Plaintiffs take the position that because all the property transfers occurred after Schofield was deposed as Bishop of the Episcopal Diocese, he therefore had no authority to make those transfers.

The rights of departing Dioceses have not been considered in any published California opinion. However, the rights of a parish church to leave a diocese or the national church have been closely examined.

The *Episcopal Church Cases* involved a local parish of the national Episcopal Church that withdrew from the national organization after a doctrinal dispute. The local parish sought to establish its ownership of the local church property. (*In re Episcopal Church Cases, supra*, 45 Cal.4th at pp. 475-476.) Applying the principles of Corporations Code section 9142, subdivisions (c) and (d), the Court held that under the governing documents of the local church and the national church, including the constitution and canons of the Episcopal Church, the original application to the higher church authorities to organize as a parish and in the articles of incorporation. (*Id.* at pp. 485-486.)

"St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments. [Under those documents], a local parish owns local church proper in trust for the greater church and may use that property only so long as the local church remains part of the greater church." (*Id.* at p. 489.) In particular, a canon in the national church's governing documents created an express trust in favor of the national church. "All real and personal property held by or for the benefit of any Parish . . . is held in trust for this [national] church and the Diocese thereof. . . ." (*Id.* at p. 475.)

Although decided before *In Re Episcopal Church Cases, New v. Kroeger* (2009) 167 Cal.App.4th 800, reached the same conclusion. *New* also involved a parish church breaking off from the Episcopal Church. In that case, the loyalist members of the parish appealed a trial court decision which held that the dissident board members and others who had voted to leave the national Episcopal Church and to affiliate with a different Church, were the lawful directors of the parish corporation. When the dissident members resigned from the church, the bishop determined they were no longer qualified to serve on the governing board of the parish. The loyalist members elected a new board but the dissident members refused to relinquish their seats or turn over the assets of the parish.

The appellate court reversed. Citing neutral principals of law, the appellate court found that the church's governing documents (including the canons and constitution of the Episcopal Church, the canons and constitution of the diocese) could be deemed to be included in the parish corporation's bylaws pursuant to Corporation's Code § 9150. (*Id.* at p. 821.)

"Thus, when defendants resigned from the Episcopal Church, they were no longer empowered to act, and their actions in attempting to amend the bylaws and articles of incorporation were a nullity. They also ceased being directors of the Parish corporation as they were not members in good standing of the Episcopal Church. This

result is also dictated by the law governing religious corporations and the Parish corporation's own bylaws and articles of incorporation." (*Id.* at p. 822.)

As the Schofield Court recognized:

These neutral principles include First Amendment rights of individuals and corporations (see *Citizens United v. Federal Election Comm'n* (2010) 558 U.S. 310, —, 130 S.Ct. 876, 899, 175 L.Ed.2d 753), general California statutory and common law principles governing transfer of title by the legal title holder, the law of trusts, including establishment of trusts and transfers by a trustee in contravention of a trust upon the property (if a trust is established by the evidence), and corporations law, including the law of corporations sole (see Corp.Code, § 10010) and general principles of corporate governance. Other neutral principles of civil law may be relevant; and the governing documents of the diocese and the national church, to the extent those documents may establish trust relationships and limit or expand corporate powers.

(*Schofield, supra*, 190 Cal.App.4th at p. 163.)

It is not enough for plaintiffs to merely state that Schofield was not the Episcopal Bishop of the Diocese of San Joaquin when he effected the transfers at issue. Plaintiffs were also required to show that, under neutral principals of law, Schofield lacked the *authority* to effect such transfers. In this regard, plaintiffs' Undisputed Material Fact No. 10 is inadequate. It merely states there is no rule of the Episcopal Church or Diocese permitting a deposed Episcopal Bishop to transfer Episcopal property. However, if the December 8, 2007 amendments to withdraw the Diocese of San Joaquin from the general Episcopal Church were valid, Schofield could, in fact, have retained the authority over the property of the Diocese. An individual incorporated as a corporation sole "may at any time amend the articles of incorporation of the corporation changing its name, the term of its existence, its territorial jurisdiction, or the manner of filling any vacancy in the office thereof, and may be amended articles of incorporation make provision for any act or thing for which provision is authorized in original articles of incorporation of corporations sole." (Corp. Code, § 10010.)

Plaintiffs have utterly failed to present either facts or evidence from which this court could conclude that the December 8, 2007 amendments enacted to leave the Episcopal Church were invalid. Unlike plaintiffs' prior motion for summary adjudication, there are no facts regarding the contents of the Episcopal Church's Canons or Constitution either at the time of the disaffiliation, or in 1961, the year the Diocese of San Joaquin was accepted into the Episcopal Church. Likewise, there are no facts concerning the text of the Episcopal Diocese's by-laws, Constitution or governing documents for any relevant year. In short, there is nothing to for this court to review under neutral principals of law.

In *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, the court stated the "Golden Rule" of summary adjudication, equally applicable to summary judgment: " '[I]f it is not set forth in the separate statement, it does not exist.' " (*Id.* at p.

As such it would be inappropriate to grant summary judgment or summary adjudication, as each cause of action in the complaint requires either that plaintiffs be found to own the property at issue or that the transfers were, in fact, wrongful. (Code Civ. Proc. § 1061; *Burleschi v. Peterson* (1998) 68 Cal.App.4th 1062, 1066; *Payne v. Treadwell* (1855) 5 Cal. 310, 312; Civ. Code § 3439.04; Code of Civ. Proc. § 760.020.)

Pursuant to California Rules of Court, rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Issued By: JYH on 3/6/13
(Judge's initials) (Date)